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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ELTON MASON,

11 Plaintiff,

12 v.

13 WASHINGTON STATE, et al.,

14 Defendants.

CASE NO. C17-186 MJP

ORDER ON MOTIONS TO
DISMISS

15
16 The above-entitled Court, having received and reviewed:

- 17 1. Defendants' Motions to Dismiss (Dkt. Nos. 41 and 43);
18 2. Plaintiff's Opposition to STP and State Defendants' Motions to Dismiss (Dkt. No.
19 47);
20 3. Defendants' Reply in Support of Motions to Dismiss (Dkt. Nos. 49 and 50);

21 and all relevant portions of the record, rules as follows:

22 IT IS ORDERED that the motions are GRANTED IN PART and DENIED IN PART.
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1 IT IS ORDERED that all claims against Defendants Washington State, Washington State
2 Department of Transportation, Office of Minority Women Business Enterprises, Lynn Peterson
3 and Linea Laird are DISMISSED with prejudice.

4 IT IS FURTHER ORDERED that all claims against Defendant Seattle Tunnel Partners
5 are DISMISSED with prejudice except the state and federal retaliation claims.

6 **Background**

7 Plaintiff is an African-American male, sole owner of Washington State Trucking
8 (“WST”), a trucking and excavating company certified as a Disadvantaged Business Enterprise
9 (“DBE”). Dkt. No. 37, Amended Complaint (“AC”) ¶¶ 1, 36. Defendant Washington State
10 Department of Transportation (“WSDOT”) is the state agency responsible for oversight of
11 highway construction projects. AC ¶ 23. Defendant Lynn Peterson is the Secretary of WSDOT.
12 AC ¶ 7. Defendant Office of Minority Women Business Enterprises (“OMWBE”) is the state
13 entity responsible for certifying as DBEs small businesses owned by minorities, women and
14 other socially/economically disadvantaged individuals. AC ¶ 3.¹ Defendant Seattle Tunnel
15 Partners (“STP”) is the design-build contractor for the Alaskan Way Viaduct (“AVW”) project.
16 AC ¶¶ 18, 19.

17 The goal of the federally-funded AVW project is to build a new State Route 99 corridor
18 through the City of Seattle. WSDOT, owner of the project, awarded the contract to STP. AC
19 ¶19. That contract calls for a goal of 8% of contracted work awarded to DBEs. AC ¶21.
20 Believing that both STP and the State of Washington were in violation of their responsibilities
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24 ¹ Hereinafter, these defendants are collectively referred to as “the State Defendants.”

1 under the contract and the law, Plaintiff filed tort claims and Title VI complaints against
2 Defendants as well as making informal complaints. AC ¶¶ 37-39.

3 The Federal Highway Administration (“FHWA”) investigated Plaintiff’s complaints and
4 issued a report in November 2013, finding that both STP and WSDOT were in violation of
5 federal regulations and the DBE program requirements. AC ¶¶ 44-45. Following the publication
6 of that report, WSDOT issued a finding that STP was in breach of contract and needed to engage
7 in commercially reasonable discussions with Plaintiff. AC ¶¶ 46-47.

8
9 Plaintiff alleges that, beginning in February of 2014, STP began a series of adverse
10 actions against his company – including offering a “burdensome,” 260-page contract for a
11 reduced amount of work, conditioning Plaintiff’s contract on the release of his claims against
12 STP, refusing to consider bids for other jobs, and making false statements about Plaintiff – which
13 Plaintiff claims were done in retaliation for the complaints he filed, and in an attempt to blacklist
14 him from getting other work. AC ¶¶ 60-61.

15 In March 2014, WSDOT and the FHWA entered into a Conciliation Agreement, under
16 which WSDOT agreed to more intensively oversee STP’s efforts to meet the 8% DBE goal, hire
17 a DBE Program Administrator and Coordinator, and take whatever steps were appropriate should
18 it appear that STP had failed to address the DBE compliance issues which the FHWA report had
19 identified. AC ¶¶ 94-98. Plaintiff alleges that WSDOT failed to meet its obligations under that
20 agreement, and failed to either properly oversee or regulate STP’s unlawful activities as
21 described *supra*. AC ¶¶ 99-104. Plaintiff alleges that this was also done in retaliation for his
22 “whistleblowing,” and that WSDOT directly retaliated against him by spreading information
23 about his equipment and work that was false to other agencies and businesses. AC ¶¶ 105, 106.
24

1 Plaintiff initially filed a complaint against Defendants alleging eleven separate causes of
2 action under state and federal law. Dkt. No. 1. In response, Defendants filed motions to dismiss
3 (Dkt. Nos. 21, 30), citing both statute of limitations issues and failure to state any claims upon
4 which relief could be granted. The Court granted those motions, dismissing Plaintiff's claim for
5 Title VI Discrimination with prejudice, but dismissing the remainder without prejudice and with
6 leave to amend. Dkt. No. 33, Order at 21 ("TSZ Order"). Plaintiff then filed this amended
7 complaint, alleging claims for Title VI retaliation; retaliation, blacklisting, and discrimination
8 under the Washington Law Against Discrimination (RCW 49.60 et seq.; "WLAD"); breach of
9 contract; and violations of § 1981 and § 1985. Defendants responded with a second round of
10 motions to dismiss which are now before the Court.

11 Discussion

12 Standard of review

14 In analyzing the parties' arguments under FRCP 12(b)(6), the Court must accept all facts
15 alleged in the complaint as true, and draw all inferences in the light most favorable to the non-
16 moving party. Barker v. Riverside County Office of Educ., 584 F.3d 821, 824 (9th Cir. 2009).
17 To survive a motion to dismiss, Plaintiff's "factual allegations must be enough to raise a right to
18 relief above the speculative level on the assumption that all the allegations in the complaint are
19 true." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007).

21 "Threadbare recitals of all the elements of a cause of action, supported by mere
22 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The
23 plaintiff must plead facts "that allow[] the court to draw the reasonable inference that the
24 defendant is liable for the misconduct alleged." Id. Factual allegations "that are merely

1 consistent with a defendant's liability... stop[] short of the line between possibility and
2 plausibility of entitlement to relief." Id.

3 Eleventh Amendment Immunity
4

5 The majority of the claims against the State of Washington, OMWBE, WSDOT and the
6 individual State employees in their official capacities ("the State Defendants") fail on Eleventh
7 Amendment immunity grounds. "[I]n the absence of consent a suit in which the State or one of
8 its agencies or departments is named as the defendant is proscribed by the Eleventh
9 Amendment... This jurisdictional bar applies regardless of the nature of the relief sought."
10 Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100-01 (1984)(citations omitted).

11 The State has not consented to suit in federal court on the claims concerning WLAD, any
12 contracts or agreements between STP and WSDOT, or any violations of § 1981 or § 1985;
13 Eleventh Amendment immunity bars all claims against the State Defendants except the Title VI
14 retaliation cause of action. Plaintiff points to RCW 4.92.090, in which the State of Washington
15 waives immunity for any and all acts of "tortious conduct," but, as the State Defendants point
16 out, a waiver of immunity in state court does not operate as a waiver of federal court immunity.
17 See Ronwin v. Shapiro, 657 F.2d 1071, 1073-74 (9th Cir. 1981); *also* McConnell v. Critchlow,
18 661 f.2d 116, 117 (9th Cir. 1981).

19
20 Plaintiff cites no authority to the contrary; the State Defendants are immune to all causes
21 of action except the Title VI retaliation claim and all other claims against the State Defendants
22 (including Defendants Peterson and Laird in their official capacities) will be dismissed with
23 prejudice.
24

1 Title VI Retaliation (42 U.S.C. § 2000d)

2 In order to successfully state a claim for Title VI retaliation, Plaintiff must establish (1)
3 that he engaged in a protected activity; (2) that Defendants took a “material adverse employment
4 action” against him; and (3) that there is a “causal connection... between the protected activity
5 and the adverse action.” Peters v. Jenney, 327 F.3d 307, 320 (4th Cir. 2003).

6
7 Defendants do not dispute that Plaintiff engaged in a “protected activity.” Regarding the
8 second element, the State Defendants argue that none of the state agencies employed Plaintiff,
9 therefore they cannot have taken a “material adverse *employment* action” against him. Plaintiff
10 has no response to this argument; the Court finds it meritorious and further finds that Plaintiff
11 has conceded its merit by his failure to respond.²

12 Regarding the retaliation claims against Defendant STP: While this non-governmental
13 defendant argues convincingly that much of Plaintiff’s amended complaint is comprised of
14 conclusory legal statements presented as factual allegations, it is nevertheless the conclusion of
15 this Court that Plaintiff has alleged sufficient facts which, if proven, could plausibly support both
16 a finding of “adverse employment action” and a legal theory that Plaintiff was retaliated against
17 for complaining about the actions of STP; to wit:

- 18
19 1. In contract negotiations, STP allegedly reduced the scope of Plaintiff’s work from an
20 original bid of \$415,800 to a contract that was ultimately worth only \$184,470 to

21
22 _____
23 ² The Ninth Circuit holds that “a plaintiff who makes a claim... in his complaint, but fails to raise the issue in
24 response to a defendant’s motion to dismiss... has effectively abandoned his claim.” Walsh v. Nevada Dept. of
Natural Resources, 471 F.3d 1033, 1037 (9th Cir. 2006). *See also* TSZ Order at 14. (“[P]laintiff has entirely failed
to respond to the arguments raised by defendants... and the Court construes this failure as an admission that the
defendants’ arguments have merit.”)

1 Plaintiff; and that, in the process of reducing the scope of the contracted job, STP made it
2 more difficult for Plaintiff to complete the contracted work profitably because he was not
3 going to get paid to break up pieces of concrete and steel which are harder to haul away
4 when intact. AC ¶¶ 61-90.

5 2. STP allegedly failed to pay Plaintiff's wages on time, creating problems with his payroll
6 and insurance. AC ¶ 61. STP calls this "entirely speculative" in its briefing (Dkt. No.
7 41, Mtn at 10), but that term does not apply here. The timing of payments to Plaintiff is a
8 strictly factual matter and the impact on Plaintiff's business a matter which is susceptible
9 of factual proof. Defendant argues that the claim is not "explained" anywhere else in the
10 complaint but Plaintiff is not required (at the pleading stage) to explain it any further. It
11 is clear enough what he is alleging, and the allegation is entirely factual. If true, it could
12 be seen as evidence of retaliation.

13
14 3. STP is alleged to have falsely accused Plaintiff of using trucks he did not own with VIN
15 numbers filed off to hinder identification of the true owner, which cost Plaintiff lost
16 business opportunities. AC ¶ 61. STP points out that the previous presiding judge
17 dismissed these same allegations as insufficient to support a claim of defamation, citing
18 (among other things) Plaintiff's failure to identify any *specific* contracts that were lost
19 (TSZ Order at 16). In his amended complaint, Plaintiff does identify a specific contract
20 which he alleges "STP... used their false accusations to justify refusing to award
21 Plaintiffs [*sic*]... when Plaintiff was the lowest bidder." AC ¶¶ 126-128.

22 STP does not dispute the sufficiency of the allegations concerning the third element –
23 causal connection -- and the Court finds that, accepting the facts of Plaintiff's whistleblowing
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1 and allegations of differential treatment as true, there is a plausible and reasonable inference of a
2 link between his protected activity and the adverse actions which he alleges. Nor does the Court
3 accept STP's argument that the fact Plaintiff received a contract he bid on eliminates any
4 possibility of retaliation. Given the facts as plead (STP was ordered to negotiate a contract with
5 him, with WSDOT looking over its shoulder), it is a plausible legal theory that Defendant
6 negotiated a punitive contract to simultaneously comply with FHWA's mandate and punish
7 Plaintiff for blowing the whistle on the company's unsatisfactory discharge of its obligations.

8
9 Plaintiff has plead sufficient factual allegations to "allow[] the court to draw the
10 reasonable inference that the defendant is liable for the misconduct alleged." Finding that it is
11 plausible that Plaintiff is entitled to relief for retaliation on the facts as alleged, the Court will
12 deny STP's motion to dismiss that cause of action.

13 Washington Law Against Discrimination ("WLAD") – RCW 49.60

14 Plaintiff alleges three theories of recovery under this statute: racial discrimination,
15 retaliation and blacklisting. As discussed *supra*, the State Defendants are immune from these
16 claims. Each theory will be examined separately as it relates to Defendant STP.

17 Racial discrimination

18
19 Adequately pleading a claim for discrimination under WLAD requires allegations that
20 Plaintiff was (1) a member of a protected class, (2) similarly situated to persons who were more
21 favorably treated, and (3) that he was treated less favorably because of his race. Marquis v. City
22 of Spokane, 130 Wn.2d 97, 113-14 (1996). Plaintiff is required to plead objective facts which
23 create a reasonable and plausible inference of discriminatory intent.
24

1 Plaintiff has failed to do this. The contract that he claims he should have been awarded
2 went to another DBE (AC ¶ 128); i.e., someone in his protected class of DBE's. Plaintiff's only
3 other proof of discrimination consists of his claim that he was retaliated against when he
4 complained (Dkt. No. 47, Response at 8), an allegation which is devoid of racial animus in and
5 of itself, and for which he alleges no additional facts in support of his claim that the retaliation
6 was racially motivated.

7 Washington courts analyzing WLAD claims often look to federal anti-discrimination law
8 in interpreting and applying the state statute. Blackburn v. Dept. of Social and Health Svcs., 186
9 Wn.2d 250, 258 (2016). Federal case law requires the pleading of objective facts which support
10 a reasonable inference of racial discrimination (*see, e.g., Gamble v. Pac. NW Regional Council*
11 *of Carpenters*, No. C14-455-RSM, 2016 WL 34424561 (W.D.Wash. May 28, 2015). Plaintiff's
12 complaint contains neither direct objective evidence of racial bias (e.g., derogatory or offensive
13 comments) nor circumstantial evidence from which it might be inferred.

14 Retaliation

15 STP cites a recent federal district court opinion that retaliation under WLAD requires an
16 employer-employee relationship (*see Owa v. Fred Meyer Stores*, 2017 WL 897808 at *3
17 (W.D.Wash., Mar. 7, 2017), but there is Washington state law to the contrary; i.e., that the
18 retaliation provisions of WLAD should be broadly construed to include independent contractors
19 under their protection. Sambasivan v. Kadlec Med. Center 184 Wn.App. 567, 591-92 (2014).
20 Finding Sambasivan more in keeping with the intent of the state statutory scheme, the Court will
21 apply the state precedent.
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1 Defendant again argues that the factual allegations supporting retaliation are “speculative
2 and conclusory.” For the reasons stated *supra* regarding Plaintiff’s Title VI retaliation claim, the
3 Court will deny Defendant’s motion as regards the WLAD claim for retaliation.

4 Blacklisting

5
6 The WLAD provisions on blacklisting (found at RCW 49.60.030(1)(f)) apply only to
7 “foreign government[s] and foreign person[s].” Plaintiff makes no response to STP’s argument
8 that the company is neither (nor does Plaintiff allege such in his complaint), yet he still insists
9 without citation or rationale that the statute applies to Defendant. It is both puzzling and futile.
10 Furthermore, the allegations that Plaintiff pleads in support of this claim were already found
11 insufficient to support a blacklisting cause of action. (*See* TSZ Order at 17.) This portion of
12 Plaintiff’s claim will be dismissed with prejudice.

13 Breach of contract

14
15 This claim was dismissed in the previous order on Defendants’ first motion to dismiss.
16 Plaintiff simply re-alleges it in an identical (and unsatisfactory) fashion.

17 The contract which Plaintiff claims is being breached is not the contract he had with STP,
18 but the contract between STP and WSDOT; i.e., the Conciliation Agreement which was executed
19 following the FHWA findings that STP was in violation of federal regulations and its agreements
20 on the AWV project. In other words, Plaintiff claims that he is a direct third-party beneficiary of
21 the Conciliation Agreement.

22
23 Not only is Plaintiff’s argument unsupported by case law (which requires, not an intent to
24 “advance [Plaintiff’s] interests, but an intent that the promisor shall assume a direct obligation to

1 [Plaintiff]”; *see* Lonsdale v. Chesterfield, 99 Wn.2d 353, 361 (1983)), but the argument has
2 already been considered and rejected. (*See* TSZ Order at 17.)

3 Furthermore, there is a provision in the STP-WSDOT agreement that specifically
4 disavows any intent to create third-party beneficiary rights for any subcontractors on the project.
5 (*See* Dkt. No. 43, App’x at ¶ 8.3.8.2(a).) In the face of all evidence to the contrary, Plaintiff
6 continues to insist that he is a direct third-party beneficiary of the Conciliation Agreement. It is
7 not a meritorious position and the claim will be dismissed with prejudice.

8
9 There is also passing mention made in Plaintiff’s amended complaint (and his briefing)
10 that Defendants violated the state’s Alternative Public Work Contracting Procedures (found at
11 RCW 39.10 *et seq.*). But nowhere in his amended complaint or his responsive briefing does
12 Plaintiff make any explanation of how any of his allegations constitute violations of those
13 provisions of the state statute. The Court considers this portion of the claim abandoned in the
14 face of STP’s objections and Plaintiff’s non-response.

15 42 U.S.C. § 1981

16
17 A claim under this federal statute is established through Plaintiff’s allegations that (1) he
18 operates a minority-owned firm; (2) that his bid on a contract “met the specifications of those
19 competing for the contract;” (3) that his bid “was significantly more advantageous... than the bid
20 actually awarded, whether in terms of price or some other relevant factor;” and (4) that another
21 contractor was selected. T & S Serv. Assocs. v. Crenson, 666 F.2d 722, 725 (1st Cir. 1981).

22 Plaintiff’s allegations against STP are a re-hash of the allegations in his original
23 complaint, allegations previously found to be “threadbare recitals of the elements of a cause of
24

1 action, supported only by conclusory statements” (TSZ Order at 11-12; e.g., Plaintiff’s
2 unsupported allegation that his bid was “the best value”) and insufficient to state a viable claim.
3 This remains the case.

4 Plaintiff’s amended allegations only concern OMWBE (AC ¶¶ 207-216); that agency, as
5 previously established, is entitled to Eleventh Amendment immunity as regards these claims and
6 they will be dismissed with prejudice.

7
8 42 U.S.C. § 1985

9 A successful claim under this act is established by alleging

10
11 (1) a conspiracy; (2) for the purpose of depriving... any person... of the equal protection
12 of the laws, or of equal privileges and immunities under the laws; and (3) an act in
13 furtherance of the conspiracy; (4) whereby a person is either injured in his person or
property or deprived of any right or privilege of a citizen of the United States.

14 Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1536 (9th Cir. 1992)(*citing* United Brotherhood of
15 Carpenters and Joiners of America v. Scott, 463 U.S. 825, 828-29 (1983)).

16 As alleged in Plaintiff’s original complaint, this claim was dismissed for two reasons: (1)
17 Plaintiff’s failure to respond to STP’s arguments in its first motion to dismiss and (2) the
18 allegations of a § 1985 conspiracy in Plaintiff’s complaint were “entirely conclusory and without
19 factual support.” (TSZ Order at 14.)

20 In response to STP’s renewed motion to dismiss, Plaintiff states that “[p]ursuant to Judge
21 Zilly’s Order, [he] alleges facts supporting injury to his reputation in the contracting
22 community.” (Response at 11.) But (1) Judge Zilly’s dismissal of his conspiracy claim said
23 nothing about failure to allege facts supporting the injury to his reputation and (2) the conspiracy
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1 claim itself said nothing about this sort of injury. It is a non-response to the problems identified
2 in the earlier order.

3 The conspiracy claim does allege that the parties conspired to refuse to grant him
4 contracts (AC ¶¶ 224, 225) and Plaintiff's response does point to where in the amended
5 complaint he specifically mentions instances of lost contracts. One of the specific instances does
6 contain allegations that Plaintiff was the lowest bidder on a contract which was awarded to
7 another DBE. (AC ¶¶ 127, 128.) While the "lowest bidder" allegation is conclusory, Plaintiff
8 also alleges that STP failed to grant him access to the bidding information when he requested it,
9 so the Court will not fault him for the lack of specificity.

10
11 However, Plaintiff completely omits any specific factual allegations regarding "an act in
12 furtherance of the conspiracy;" i.e., some specifics to support his claim that Defendants made an
13 agreement among themselves to deprive him of his rights. In other words, he has failed to allege
14 a conspiracy. Given that he has already been given an opportunity to correct this exact problem,
15 dismissal with prejudice is appropriate.

16 Injunctive/Declaratory Relief

17
18 In both the caption of the Amended Complaint and in the prayer for relief, Plaintiff
19 requests declaratory and injunctive relief. (AC § VI, ¶¶ C, D.) The State Defendants argue that
20 declaratory relief is only proper only when "the facts alleged... show that there is a substantial
21 controversy, between parties having adverse legal interests, of sufficient immediacy and reality
22 to warrant the issuance of a declaratory judgment." Maryland Cas. Co. v. Pac. Coal & Oil Co.,
23 312 U.S. 270, 273 (1941). Further,

1 A case or controversy exists justifying declaratory relief only when the challenged
2 activity... is not contingent, has not evaporated or disappeared, and, by its continuing and
3 brooding presence, casts what may well be a substantial adverse effect on the interests of
4 the... parties.... [A] declaratory judgment merely adjudicating past violations of federal
law – as opposed to continuing or future violations of federal law – is not an appropriate
exercise of federal jurisdiction.

5 Bayer v. Neiman Marcus Group, 861 F.3d 853, 864 (9th Cir. 2017).

6 Additionally, “the purpose of injunctive relief is to prevent future harm.” Geier v. M-
7 Qube Inc., 314 F.R.D. 692, 699 (W.D. Wash. 2016). Plaintiff’s amended complaint contains no
8 allegations of future harm arising out of the incidents of which he complains. He has alleged no
9 current contractual relationship with any of the defendants. “A plaintiff who cannot reasonably
10 be expected to benefit from prospective relief ordered against the defendant has no claim for an
11 injunction.” Bayer, *supra* at 864.

12
13 Finally, Plaintiff made no response to any of these arguments. His claims to equitable
14 relief will be dismissed with prejudice.

15 Claims against Linea Laird and Lynn Petersen in their individual capacities

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17 Because of Plaintiff’s poorly-worded amended complaint, it is unclear from the face of
18 that pleading whether these two state employees are being sued in their individual (as well as
19 their official) capacities.

20 Plaintiff indicates in his response that all claims against Linea Laird are dismissed.
21 (Response at 11.) He does state, though, that he “is suing Lynn Peterson [Secretary of WSDOT]
22 in her individual capacity.” (Id. at 4.) However, as the State Defendants point out, the amended
23 complaint contains no allegations of any wrongdoing on the part of Defendant Peterson. She is
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1 mentioned exactly twice in the Amended Complaint: once when she is identified as the Secretary
2 of WSDOT (AC at ¶ 7), and again when she is identified as the official who executed the
3 Conciliation Agreement. (AC at ¶ 96.) All of Plaintiff's allegations of malfeasance thereafter
4 only mention "WSDOT," with no allegations that Peterson herself did anything illegal or
5 improper.

6 The very case cited by Plaintiff in support of his suit against Peterson as an individual
7 contains language which warns about "masked official capacity suits:"

8
9 In any suit against [individuals who serve in an official capacity], we must be sensitive to
10 whether "the judgment sought would expend itself on the public treasury or domain, or
11 interfere with the public administration, or if the effect of the judgment would be to
12 restrain the [sovereign] from acting, or to compel it to act."

13 Maxwell v. County of San Diego, 708 F.3d 1075, 1088 (9th Cir. 2013)(*cited in* Pistor v. Garcia,
14 791 F.3d 1104, 1113 (9th Cir. 2015). This is an apt description of the state of Plaintiff's
15 pleadings. All of his allegations are against WSDOT generally and he seeks (through his request
16 for injunctive and declaratory relief) to restrain or compel *the agency* to act. There are no
17 allegations suggesting that Peterson directed the actions of the agency in inappropriate or illegal
18 ways or was acting *ultra vires* to achieve some personal goal or agenda; suing her in her
19 individual capacity is simply a way to get around the sovereign immunity which WSDOT enjoys
20 by virtue of the Eleventh Amendment.

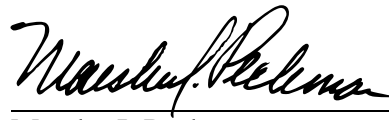
21 The claims against Defendant Peterson in her individual capacity will be dismissed with
22 prejudice.
23
24

1 **Conclusion**

2 While Plaintiff's amended complaint is far from a model of proper pleading, the Court
3 finds that he has alleged sufficient facts which, viewed in the light most favorable to him,
4 plausibly and reasonably raise the inference that he entitled to relief for retaliation under both the
5 federal and state statutory schemes. He will permitted to proceed on that claim alone. The rest
6 of his claims – which he has been given a chance to amend satisfactorily and failed -- will be
7 dismissed with prejudice. The State Defendants will be dismissed from the complaint entirely.
8

9
10 The clerk is ordered to provide copies of this order to all counsel.

11 Dated: December 5, 2017.

12 
13 Marsha J. Pechman
14 United States District Judge
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